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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Pamela C. Sullivan,

Plaintiff,

v.

Bank of America, National Association,

Defendant.

No. 4:13-cv-01166-BGM

ANSWER

In response to plaintiff's Complaint, defendant Bank of America, N.A admits, denies, and alleges as follows:

1. The Parties, the Claim, and Jurisdiction and Venue

1. Defendant is without sufficient information to admit or deny the allegations in paragraph 1 of Plaintiff's Complaint and therefore denies those allegations.

2. Defendant admits the allegations contained in paragraph 2 of Plaintiff's Complaint.

3. Defendant admits the allegations contained in paragraph 3 of Plaintiff's Complaint.

4. Defendant admits it employed Plaintiff, but denies that she was terminated because of her age. All remaining allegations contained in paragraph 4 of Plaintiff's Complaint are denied.

5. Defendant admits Plaintiff brings her claim under 29 U.S.C. § 623(a)1. All remaining allegations contained in paragraph 5 of Plaintiff's Complaint are denied.

1 6. Defendant admits that jurisdiction is proper in this Court. All remaining
2 allegations contained in paragraph 6 of Plaintiff's Complaint are denied.

3 **2. Additional Fact Allegations in Support of ADEA Claim**

4 7. Defendant admits Plaintiff was hired on October 19, 1992; that she was
5 promoted to the position of Senior Vice President & Consumer Market Executive for the
6 Southwest Arizona Community Banking Division; that this position was the highest level
7 position in the Tucson market; and that she was responsible for the success of more than
8 25+ banking centers assigned to her market. Defendant is without sufficient information to
9 admit or deny the remaining allegations in paragraph 7 of Plaintiff's Complaint and
10 therefore denies them.

11 8. Defendant denies the allegations contained in paragraph 8 of Plaintiff's
12 Complaint.

13 9. Defendant is without sufficient information to admit or deny the allegations
14 contained in paragraph 9 of Plaintiff's Complaint and therefore denies them.

15 10. Defendant admits Plaintiff received a does not meet rating. Defendant denies
16 the remaining allegations contained in paragraph 10 of Plaintiff's Complaint.

17 11. Defendant denies the allegations contained in paragraph 11 of Plaintiff's
18 Complaint.

19 12. Defendant admits the allegations contained in paragraph 12 of Plaintiff's
20 Complaint.

21 13. Defendant denies the allegations contained in paragraph 13 of Plaintiff's
22 Complaint.

23 14. Defendant is without sufficient information to admit or deny the allegations
24 contained in paragraph 14 of Plaintiff's Complaint and therefore denies them.

25 15. Defendant denies the allegations contained in paragraph 15 of Plaintiff's
26 Complaint.

27 16. Defendant is without sufficient information to admit or deny Plaintiff's
28 allegation that she offered to work as a teller and therefore denies the allegation. Defendant

1 denies the remaining allegations in paragraph 16 of Plaintiff's Complaint.

2 17. Defendant admits Plaintiff was terminated on November 30, 2010. All
3 remaining allegations contained in paragraph 17 of Plaintiff's Complaint are denied.

4 18. Defendant admits the allegations contained in paragraph 18 of Plaintiff's
5 Complaint.

6 19. Defendant is without sufficient information to admit or deny the allegations
7 contained in paragraph 19 of Plaintiff's Complaint and therefore denies them.

8 20. Defendant is without sufficient information to admit or deny the allegations
9 contained in paragraph 20 of Plaintiff's Complaint and therefore denies them.

10 21. Defendant denies the allegations contained in paragraph 21 of Plaintiff's
11 Complaint.

12 22. Defendant denies the allegations contained in paragraph 22 of Plaintiff's
13 Complaint.

14 23. Defendant is without sufficient information to admit or deny the allegation
15 that Plaintiff's stock options would have vested had she remained employed through
16 January 2011 and therefore denies the allegation. Defendant denies the remaining
17 allegations in paragraph 23 of Plaintiff's Complaint.

18 24. Defendant denies the allegations contained in paragraph 24 of Plaintiff's
19 Complaint.

20 **3. Exhaustion of Administrative Remedies**

21 25. Defendant admits that Plaintiff filed a charge of discrimination within 300
22 days from her termination on November 30, 2010 and that her charge states that she
23 suffered from age discrimination in employment when Defendant terminated her on
24 November 30, 2010. All remaining allegations contained in paragraph 25 of Plaintiff's
25 Complaint are denied.

26 26. Defendant admits the allegations contained in paragraph 26 of Plaintiff's
27 Complaint.

28 27. Defendant admits the allegations contained in paragraph 27 of Plaintiff's

1 Complaint.

2 28. Defendant denies each and every averment of Plaintiff's Complaint not
3 expressly admitted herein.

4 **4. Demand for Trial by Jury**

5 29. Plaintiff's Complaint contains a demand for jury trial to which no response is
6 required.

7 **5. Relief Requested**

8 Defendant admits that Plaintiff seeks recovery of damages as alleged in the
9 unnumbered paragraph of Plaintiff's Complaint under the heading "Relief Requested," but
10 denies that Plaintiff is entitled to any of the relief or damages alleged in the paragraph and
11 its subparts.

12 **AFFIRMATIVE DEFENSES**

13 Defendant hereby states the following affirmative and additional defenses to the
14 Complaint, but does not assume the burden of proof on any such defenses except as
15 required by applicable law with respect to a particular defense asserted:

16 1. The Complaint is barred in whole or in part because it fails to state a claim
17 upon which relief may be granted.

18 2. Plaintiff's claims are barred to the extent that she failed to exhaust all
19 available administrative remedies.

20 3. Even if Plaintiff could state a claim for relief in this action, Plaintiff cannot
21 state a claim for punitive damages.

22 4. All actions taken by Defendant with respect to Plaintiff, if any, were
23 justified, privileged, reasonable, made in furtherance of a common interest, taken in good
24 faith, without any improper motive, purpose or means and/or without any hatred, ill will,
25 malice, intent to injure, or reckless disregard to the rights of Plaintiff.

26 5. Defendant had policies and procedures in effect, and exercised reasonable
27 care, to prevent and promptly correct the alleged unlawful conduct, and Plaintiff
28 unreasonably failed to avail herself of those policies and procedures.

1 6. Defendant did not engage in any conduct warranting recovery by Plaintiff of
2 compensatory, liquidated, or punitive damages, attorney's fees, costs or any other form of
3 relief whatsoever.

4 7. To the extent Plaintiff failed to institute this action within the time required
5 under the applicable statute of limitations, her claims for relief are barred.

6 8. Plaintiff's prayer for relief must fail to the extent that Plaintiff has failed to
7 mitigate her damages as required by law.

8 9. In the unlikely event that back pay damages are awarded to Plaintiff,
9 Plaintiff's interim earnings and benefits, and any earnings and benefits she could have
10 earned with reasonable diligence, shall operate as an offset to reduce the damages award.

11 10. Plaintiff's claims are barred in whole or in part by the doctrine of laches,
12 estoppel, unclean hands, waiver, and all other applicable defenses listed in Fed. R. Civ. P.
13 8(c).

14 11. Defendant denies any discrimination occurred; to the extent that any alleged
15 discrimination against Plaintiff did occur, any agents or employees of Defendant were not
16 acting within the course and scope of their employment when any of the purported
17 discrimination took place. Defendant is not liable for alleged intentional acts committed
18 outside the course and scope of employment.

19 12. Defendant reserves the right to argue that Plaintiff's claims are pre-empted
20 and thus barred by the National Bank Act, 12 U.S.C. §§ 21, *et seq.*

21 13. Defendant hereby gives notice that it reserves the right to assert, and does not
22 waive, any additional or further defenses as may be revealed by additional information
23 acquired during discovery or otherwise, and reserves the right to amend this Answer to
24 assert any such defenses.

25 WHEREFORE, Defendant requests that Plaintiff's Complaint be dismissed in its
26 entirety, with prejudice, that Defendant be awarded its full attorneys' fees incurred in
27 defending this matter, that it be awarded all costs incurred, including any expert fees, and
28 that it be awarded such other and further relief as the Court may deem just and equitable.

1 RESPECTFULLY SUBMITTED this 21st day of October, 2013.

2 RYLEY CARLOCK & APPLEWHITE

3 /s/ John M. Fry

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2013 I electronically transmitted the foregoing ANSWER to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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By: s/ Tina Kaminski